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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/783,812

02/20/2004

Barry Gammon

GAM-001CON

7060

35557

7590

06/30/2008

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EXAMINER

SHAKERI, HADI

ART UNIT

PAPER NUMBER

3723

MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10783812	2/20/04	GAMMON, BARRY	GAM-001CON

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ART UNIT	PAPER
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3723	20080624
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Commissioner for Patents

This communication is in response to the Remand by BPAI forwarded on 06/13/2008. The Application was remanded to the Examiner to clarify the declaration submitted by the Appellant as Appendix B to the Appeal Brief filed on 09/15/2006.

Firstly it is noted that said declaration was filed in the parent application 10/374,239, now USP 6,701,807 and was never filed for this application. Secondly the declaration (having the serial number of the parent application) was made part of the appendix in the Brief filed on 11/23/04 in response to the first non-final rejection. In response to the first Brief, Examiner withdrew the rejections and new grounds of rejections were set forth, on 01/31/2005. Appellant in response to the new rejections, made a reference to this declaration in arguing patentability over USP 2,715,347 issued to Johnson, which was applied to claims 1 and 2 of the pending application under 35 USC § 102 anticipation rejections and no arguments or reference were made with regards to obviousness rejections. Examiner in the subsequent final rejection, addressed the arguments and reference made to the declaration, by indicating that a declaration filed under 37 CFR § 1.132 is insufficient to overcome the anticipation rejections. Appellant again made the same remarks to the declaration in the Brief under review by BPAI. Examiner is maintaining the position taken in the Final rejection, that the declaration is insufficient to overcome the rejections under 35 USC § 102. It is also noted that the declaration is insufficient because firstly no declaration is officially filed for this application. Secondly the declaration by Mr. L'Heureux stating opinions or allegations that the tool of Johnson has the same limitations of the prior art tools (sections 12 and 13 of the declaration) fail to provide a nexus between the claimed invention and the secondary considerations, regarding the obviousness rejections over Johnson as modified only, since obviousness rejection over Higgins were not applied in the parent application. Teaching references (Farman et al. and Makovsky et al.) were utilized to modify the tool of Johnson with regards to stepped configuration and slots for application to wing nuts, none of these features are argued for patentability or shown non-obvious by the secondary considerations. Mr. L'Heureux states that the longstanding problem of accessing basin nut is solved due to the offline port relative to the center of the body and that Johnson does not have the driver port as part of the socket head and that the arrangement of Johnson appears to require considerable room. Appropriate weight given to these allegations and/or opinions fail to influence the underlying basis that Johnson in fact does disclose an offline port as part of the "socket head".

/Hadi Shakeri/
Primary Examiner, Art Unit 3723